

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

VILMA MONTANO,

Plaintiff,

v.

INOVA HEALTH CARE SERVICES
d/b/a INOVA FAIRFAX HOSPITAL,

Defendant.

Civil Action No. 1:08cv565

REPORT AND RECOMMENDATION

Defendant has moved the court to dismiss the *pro se* plaintiff's amended complaint with prejudice as a discovery sanction (no. 71). In response, plaintiff requests that the complaint be dismissed without prejudice.

For reasons stated from the bench, the magistrate judge recommends that the amended complaint be dismissed without prejudice, conditioned on: (1) discovery had in the present action being applicable in any refiled action, and (b) plaintiff being responsible for taxable costs in the present action if costs be taxed against her in any refiled action.

NOTICE

The parties are advised that, pursuant to 28 U.S.C. §636 and Fed. R. Civ. P. 72(b), exceptions to this Report and Recommendation must be filed within ten (10) days. Failure to object to this Report and Recommendation waives appellate review of a judgment based on this Report and Recommendation.

/s/

Thomas Rawles Jones, Jr.
United States Magistrate Judge

Alexandria, Virginia

December 19, 2008